

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

PRECISION SEED CO., et al.,

:

Plaintiffs,

Case No. 3:03-cv-079

:

-vs-

Chief Magistrate Judge Michael R. Merz

CONSOLIDATED GRAIN & BARGE
COMPANY,

:

Defendant.

**DECISION AND ORDER DENYING DEFENDANT'S MOTION *IN LIMINE* TO
EXCLUDE EVIDENCE BASED ON JOHN ARMSTRONG'S SUPPLEMENTAL
EXPERT REPORT**

This case is before the Court on Defendant's Motion *in Limine* to Exclude Evidence Based on John Armstrong's Supplemental Expert Report and/or Any Other Expert Opinions that Were Not Disclosed in Mr. Armstrong's Original Expert Report or During His Deposition (Doc. No. 137) which Plaintiffs oppose (Doc. No. 151).

John Armstrong is Plaintiffs' seed expert. After Plaintiffs acquired numerous documents from Precision Soya, mostly after the discovery cut-off, Mr. Armstrong rendered a supplemental expert report which was filed with the Court February 1, 2006. It is the opinions in that report which Defendant seeks to exclude.

The Motion in Limine is denied. As Plaintiffs point out, and as the Court has recognized to Defendant's benefit in the context of Mr. Toman's testimony, an expert is obliged to supplement an initial report when he learns of additional information which impacts his opinions.

Here, it is true, the supplemental report was filed substantially after the discovery cut-off.

However, the disclosure was almost four months before trial which would have been ample time for Defendant to depose Mr. Armstrong on his supplemental report. Given that there would have been no threat to the trial date, the Court would certainly have granted leave to reopen discovery for that purpose, but Defendant never asked.

The law favors disposition of matters on their merits rather than on procedural rules. Here, any possible prejudice could have been avoided by a request to reopen for a limited purpose. Defendant having failed to request to re-depose Mr. Armstrong, its Motion in Limine to exclude testimony based on his supplemental report is denied.

May 16, 2006.

s/ Michael R. Merz
Chief United States Magistrate Judge